STRAITS SETTLEMENTS LAW REPORTS.

PUBLISHED BY AUTHORITY.

[COURT OF CRIMINAL APPEAL]

REX v. LEC DE CRUZ.

[Criminal Appeal No. 2 of 1934]

Appeal against sentence—Grounds on which the Court will interfere with a sentence.

The Court of Criminal Appeal will not interfere with the decision of the Court below on the question of sentence, unless the Judge has proceeded on wrong principles or given undue weight to some of the evidence.

Appeal against sentence.

The accused was tried at the Malacca Assizes on October 1st, and 2nd 1934 and was convicted on three charges of the offence of falsifying accounts under Section 477A of the Penal Code, and was sentenced to 3 years Rigorous Imprisonment on each charge, the sentences to run concurrently. He appealed from these sentences on the following grounds namely:—"The sentence is excessive in view of the fact that I am only 24 years of age, with no previous conviction, and that the amount involved is not more than $50."

The Appeal came on for hearing on the 2nd November, 1934 before the Chief Justice, Sir Walter Huggard, Prichard and Mills, JJ.

E. A. Stevens for Appellant.

Adrian Clark, D.P.P., for Crown. The facts justify a severe sentence as they shew ingenious frauds, practised over a period of three months, by an employee paid for the very purpose of guarding his employer against fraud. A decision as to sentence is an exercise of a judicial discretion. The Court of Criminal Appeal in England, soon after it came into existence, laid down the principles to be applied in an appeal against sentence, in the cases of *R.* v. *Sidlow*, (1908) 1 C.A.R., 29, and *R.* v. *Nuttall*, (1908) 1 C.A.R. 180.

The Judgment of the Court was delivered by The Honourable Sir Walter Huggard, Chief Justice in a short oral Judgment.

HUGGARD, C.J.—"In determining appeals this Court will ordinarily apply principles which have been laid down by the Court of Criminal Appeal in England. In regard to appeals against sentence it has been laid down that the Court will not interfere with the sentence, unless the Judge has proceeded on wrong principles or given undue weight to some of the evidence.

"There is no indication in this case that the Judge did either of these things. Therefore although it is possible that we, had we been sitting as individual judges, might have been inclined to impose a lesser sentence, we feel we are bound by the decisions laid down, and this appeal must therefore be dismissed."

Appeal dismissed.

Solicitors for the Appellant—*Allen and Gledhill.*

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, J.

October 29, 1934.

REX v. KHOO BOO LONE

[SINGAPORE MAGISTRATES APPEAL No. 28 of 1934]

Ordinance No. 99. (Medical Registration) S. 20—Unqualified native practitioner.

The Appellant was a Burmese herbalist practising in Singapore who described himself in the English version of his advertisements as "Burmese Specialist" "Dr. Khoo Boo Lone" and in the Chinese version as "Ee Seng" (Yee Sang) (doctor).

Held that the Appellant had used a title implying a qualification to practise medicine and that he had done so purposely and therefore wilfully and falsely and that he had been properly convicted under S. 20 of Ordinance No. 99 (Medical Registration).

Magistrates Appeal.

The Appellant was charged before the Magistrate with an offence under S. 20 of Ordinance No. 99 (Medical Registration). He was convicted and sentenced to a fine of $20. or 3 weeks imprisonment in default. From this conviction he appealed.

Hoalim for Appellant.—S. 21 of Ordinance 99 provided that nothing in the Ordinance shall be construed to prohibit or prevent the practice of native systems of therapeutics according to Indian, Chinese, or other Asiatic methods. Accused has always described himself as Burmese Specialist; and in Chinese as "Ee Seng"—i.e. doctor, but that does not mean that he has a diploma in western medicine. No member of the public has been called to give evidence of deception. If accused used the title of "doctor" under a supposed though mistaken idea that he has a right to do so he was not doing so wilfully and falsely and was guilty of no offence.

Bassett, (D.P.P.) for Crown.—The signboard outside the accused's premises reads "Burmese Specialist" "Dr. Khoo Boo Lone." The word "doctor" may only be used by those who have recognised qualifications. The accused used that word intentionally and therefore wilfully and falsely within the meaning of the Section.

Evidence was given that "Ee Seng" in Chinese means a doctor as distinguished from "Sin Say" which means a native "quack doctor" or herbalist.

Combined effect of Ss. 20 and 21 of Ordinance 99 is that appellant is allowed to practise native systems of therapeutics but not to use a title implying that he has a qualification as defined in S. 16.

Hoalim in reply.

Cur. Ad. Vult.

TERRELL, J.—The appellant was charged with wilfully and falsely using a title namely "doctor" and thereby implying a qualification to practise medicine or surgery, an offence punishable under Section 20 of Ordinance No. 99 (Medical Registration).

The appellant had practised a Burmese system of healing with roots, herbs and patent medicines for 40 years. On his leaflets and his sign boards he described himself in English and Chinese as Burmese Specialist, Dr. Khoo Boo Lone. In the Chinese version of these advertisements he is described as 'Ee Seng' which means 'doctor' and not as 'Sin Say' which means 'quack doctor' and is the term usually employed by unqualified practitioners.

The relevant sections of the Ordinance are Nos. 20 and 21 which read as follows:—

> 20. Any person who wilfully and falsely makes or uses in the Colony any name, title or addition implying a qualification to practise medicine or surgery or, not being registered under this Ordinance or exempted from registration under section 17, practises or professes to practise or publishes his name as practising medicine or surgery or receives any payment as practising medicine or surgery shall be liable on summary conviction before a Police Court to a penalty not exceeding five hundred dollars for each offence and to a further penalty of five dollars a day during the continuance of such offence.
>
> 21. Nothing in this Ordinance shall be construed to prohibit or prevent the practice of native systems of therapeutics according to Indian, Chinese or other Asiatic method.

The Ordinance is based on the English Medical Act, 1858, but there are certain differences. Section 40 of the Act upon which section 20 of the Ordinance is founded reads as follows:—

> "Any person who shall wilfully and falsely pretend to be or take or use the name or title of a physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner or apothecary, or any name, title, addition, or description implying that he is registered under this Act, or that he is recognised by law as a physician, or surgeon, or a practitioner in medicine, or an apothecary, shall upon a summary conviction for any such offence, pay a sum not exceeding twenty pounds."

Section 21 of the Ordinance has no counterpart in the English Act.

In the result native systems of medicine may be practised provided that the practitioner does not call himself by any name or title implying that he is registered under the Ordinance.

Section 20 of the Ordinance is in more general terms than section 40 of the Act but in my opinion the effect is identical and the English decisions on section 40 of the Act are relevant.

It was conclusively established that the appellant was not registered under the Ordinance, and that he called himself by a name which implied that he was so registered. The only question for decision therefore was whether he did so "wilfully and falsely."

The case most favourable to the appellant is *Ellis* v. *Kelly*, VI H. & N. p. 222, decided in 1860 within two years after the passing of the Act. It appeared that Kelly had a genuine diploma from a German University which would have qualified him to practise medicine in Germany and that he had in fact practised in England as 'Dr. Kelly' before the passing of the Act. The Court of Exchequer Chambers decided that he had not acted 'wilfully or falsely.' Bramwell, B. put the case as follows:—

> "Did the respondent wilfully and falsely, in other words criminally, pretend to be, or use the title of a physician? There is nothing more than this, that having a foreign diploma he chose to put the word 'Dr.' before his name. I think that the magistrates took the right view of the case. They seem to have held that the respondent might well call himself 'Dr. Kelly,' on the supposition that he had a right to do so. I do not say that if he continues to use that description after what has taken place he may not be responsible."

Although in *Andrews* v. *Styrap*, 26 L.T.N.S. at p. 706 Bramwell, B. showed an inclination to recant from his decision in *Ellis* v. *Kelly*, the Divisional Court in *Hunter* v. *Clare*, (1899) 1 Q.B. p. 635, considered that the case of *Ellis* v. *Kelly* was good law and followed it.

In the case of *Andrews* v. *Styrap* decided in 1872 the appellant Andrews had paid a fee to the University of Philadelphia for a medical degree which did not involve the passing of an examination or any medical qualification whatever, and then proceeded to describe himself in England as 'M.D.'. The Court held that he must have known that his supposed qualification was worthless and that accordingly there was sufficient evidence that he had acted wilfully and falsely.

In the case of *Reg.* v. *Baker and Another*, 66 L.T.N.S. 416, the Magistrate had convicted one Samuel Smith for having described himself as 'M.D.', 'Surgeon and Physician' and 'legally

registered practitioner' although he was in fact only a registered licentiate of the Society of Apothecaries. The matter came before the Queen's Bench Division on a rule *nisi* for a *certiorari*. The Court discharged the Rule. In the course of his judgment Lord Coleridge, C.J. said, "Now the argument of Mr. Harris, driven to its conclusion, resulted in this, that a man registered under the Act as having one qualification may claim any other qualification mentioned in the 40th section without incurring the penalty. Now I must say myself, I think that a perfectly monstrous contention." The learned Chief Justice then quoted with approval from judgment of Lord Bramwell in the case of *Ellis* v. *Kelly*.

In the case of *Hunter* v. *Clare*, (1899) 1 Q.B. p. 635, the appellant Hunter was registered under section 6 of the Medical Act as a medical practitioner entitled to practise medicine, surgery and midwifery. He described himself as a physician. The Court held that he was not entitled so to describe himself but held further that he had not acted 'wilfully and falsely.' Channell, J. distinguished this case from the case of *Reg.* v. *Baker*. Lawrence, J. did not refer to the case at all, and it would certainly appear that the decisions are inconsistent.

However that may be, the result of the decisions appears to be this. If the practitioner has a proper qualification though not a qualification which would strictly entitle him to use a description implying that he is registered under section 40 of the Act, the Court may on the facts give him the benefit of the doubt and acquit him on the ground that *mens rea* has not been established. When however, the practitioner has no qualification, or a qualification as in *Andrews* v. *Styrap*, which he must have known to be worthless, the practitioner must be presumed to have used the title of 'Dr.' or 'physician' wilfully and falsely.

In the present case it cannot be supposed that the appellant considered himself entitled to use the title of doctor. In fact he practised for years without using that title. When he did use it he must have done it 'purposely' or in the eyes of the law with criminal intent. I think, therefore, that he was rightly convicted and that the appeal must be dismissed.

Appeal dismissed.

Solicitors for the Appellant—*Mendis & Ahlip.*

[ORIGINAL CIVIL JURISDICTION]
MURISON, C.J.
March 22, 1929.

RE LIM QUEE GEOK (M.W.)

[SINGAPORE BANKRUPTCY No. 8 of 1929]

Bankruptcy—Jurisdiction to adjudge bankrupt a married woman—Ordinance No. 76 (Married Women's Property) S. 1 (5)—Ordinance No. 44 (Bankruptcy) S. 117.

The Court has no jurisdiction to adjudge bankrupt a married woman without proof that she has separate property.

Petition in bankruptcy.

The debtor Lim Quee Geok who was a married woman dealt in diamonds and jewellery but she kept no place of business. She bought jewellery to order and sold it to her customers. Her debtors having failed to pay she became insolvent. The petitioning creditor applied to have her adjudged bankrupt on the ground that she was carrying on a trade separately from her husband. The debtor denied that she had any separate property.

Cobbett for the petitioning creditor. Ordinance No. 44 (Bankruptcy) Section 117 and Ordinance No. 76 (Married Women's Property) Section 1 (5) are to be read together. *Re Miles*, 8 S.S.L.R. 18.

Demuth for the debtor.

The Court has no jurisdiction to make an order of adjudication against a married woman without proof that she has separate property. Ordinance No. 44 (Bankruptcy) S. 117.

The debtor gave evidence to the effect that she had no separate property.

Cur. Ad. Vult.

Counsel agreed that Section 1 (5) of The Married Women's Property Ordinance, 1902 was no longer law in the Colony (i.e. since the Revised Edition of the Straits Settlements Laws 1926 Ed.)

The Court referred to *Re Simon*, (1909) 1 K.B. 201.

MURISON, C.J. delivered a short oral judgment.

I think the words "if any" (in Section 117 of Ordinance No. 44) mean that it must be proved that the debtor had some assets. I have no such evidence. The petition is therefore refused with costs.

Petition refused.

Solicitors for the petitioning creditor—
Rodyk & Davidson.

Solicitors for the debtor—
Shelley-Thompson & Demuth.